

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NORTHEASTERN DIVISION

UNITED STATES OF AMERICA )

v. )

YENNIER CAPOTE GONZALEZ )

No. 2:10-00011

Chief Judge Haynes

*Added  
for the reason  
stated in open  
court, this  
motion is  
GRANTED.  
[Signature]  
2-15-13*

MOTION OF THE GOVERNMENT FOR  
A SENTENCING GUIDELINES OBSTRUCTION OF JUSTICE ENHANCEMENT

The United States of America (the Government), by and through its undersigned attorney, hereby moves for the imposition of a United States Sentencing Guidelines (U.S.S.G.) Obstruction of Justice enhancement pursuant to U.S.S.G. §3C1.1. The Government submits that an obstruction of justice enhancement is warranted because defendant committed perjury with respect to the prosecution of this case.

U.S.S.G. §3C1.1 provides for a 2 level upward adjustment if “the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant’s offense of conviction and any relevant conduct . . . increase the offense level by 2 levels.”

The Application Notes to §3C1.1 provide examples of the type of conduct covered by the section. For example, in Note 4(B) it is stated that: “committing, suborning, or attempting to suborn perjury. . .” is a type of conduct to which the obstruction enhancement applies. Indeed, it has long been settled that “a defendant’s right to testify does not include the right to commit perjury.” *United States v. Washington*, 702 F.3d 886, 896 (6<sup>th</sup> Cir. 2012) quoting *United States v. Dunnigan*, 507 U.S. 87, 96 (1993). Another example of the type of conduct to which the obstruction adjustment is